

CENTER FOR DISABILITY ACCESS
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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Jose Estrada,

Plaintiff,

v.

Baralat Company, a California
Limited Partnership;
Valjun, Inc., a California
Corporation;
Cardenas Markets LLC, a
Delaware Limited Liability
Company; and Does 1-10,

Defendants.

Case No.

**Complaint For Damages And
Injunctive Relief For** Violations
Of: American's With Disabilities
Act; Unruh Civil Rights Act

Plaintiff Jose Estrada complains of Defendants Baralat Company, a California Limited Partnership; Valjun, Inc., a California Corporation; Cardenas Markets LLC, a Delaware Limited Liability Company; and Does 1-10 ("Defendants") and alleges as follows:

PARTIES:

1. Plaintiff is a California resident with physical disabilities. He is a

1 paraplegic who cannot walk and who uses a wheelchair for mobility. He drives
2 a van with an electric ramp and uses portable hand controls.

3 2. Defendant Baralat Company owned the real property located at or
4 about 16721 Valley Blvd., Fontana, California, in April 2017.

5 3. Defendant Baralat Company owns the real property located at or about
6 16721 Valley Blvd., Fontana, California, currently.

7 4. Defendant Valjun, Inc. owned the real property located at or about
8 16721 Valley Blvd., Fontana, California, in April 2017.

9 5. Defendant Valjun, Inc. owns the real property located at or about 16721
10 Valley Blvd., Fontana, California, currently.

11 6. Defendant Cardenas Markets LLC owned the Cardenas Market #7
12 located at or about 16721 Valley Blvd., Fontana, California, in April 2017.

13 7. Defendant Cardenas Markets LLC owns the Cardenas Market #7
14 ("Supermarket") located at or about 16721 Valley Blvd., Fontana, California,
15 currently.

16 8. Plaintiff does not know the true names of Defendants, their business
17 capacities, their ownership connection to the property and business, or their
18 relative responsibilities in causing the access violations herein complained of,
19 and alleges a joint venture and common enterprise by all such Defendants.
20 Plaintiff is informed and believes that each of the Defendants herein,
21 including Does 1 through 10, inclusive, is responsible in some capacity for the
22 events herein alleged, or is a necessary party for obtaining appropriate relief.
23 Plaintiff will seek leave to amend when the true names, capacities,
24 connections, and responsibilities of the Defendants and Does 1 through 10,
25 inclusive, are ascertained.

26
27 **JURISDICTION & VENUE:**

28 9. This Court has subject matter jurisdiction over this action pursuant to

1 28 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans with
2 Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

3 10. Pursuant to supplemental jurisdiction, an attendant and related cause
4 of action, arising from the same nucleus of operative facts and arising out of
5 the same transactions, is also brought under California's Unruh Civil Rights
6 Act, which act expressly incorporates the Americans with Disabilities Act.

7 11. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b) and is
8 founded on the fact that the real property which is the subject of this action is
9 located in this district and that Plaintiff's cause of action arose in this district.

10
11 **FACTUAL ALLEGATIONS:**

12 12. The Plaintiff went to the Supermarket in April 2017 to shop.

13 13. The Supermarket is a facility open to the public, a place of public
14 accommodation, and a business establishment.

15 14. Transaction counters are another one of the facilities, privileges, and
16 advantages offered by Defendants to patrons of the Supermarket.

17 15. The transaction counters in the meat and cheese department were more
18 than 36 inches in height.

19 16. There were no lowered, 36-inch or lower portion of the transaction
20 counters for persons with disabilities to use. The transaction counters in the
21 meat department is 55 inches high while, the cheese counter is 40 inches high.

22 17. Additionally, there was a ticket dispenser placed on the transaction
23 counter of the meat department for patrons to take a serving number.

24 18. However, the ticket dispenser was more than 48 inches above the finish
25 floor and was not effectively used by wheelchair users. In fact, the ticket
26 dispenser is 59 inches high.

27 19. Currently, the transaction counters in the meat and cheese department
28 area more than 36 inches in height.

1 20. Currently, there is no lowered, 36-inch or lower portion of the
2 transaction counters for persons with disabilities to use.

3 21. Currently, there is a ticket dispenser placed on the transaction counter
4 of the meat department for patrons to take a serving number.

5 22. Currently, the ticket dispenser is more than 48 inches above the finish
6 floor and is not effectively used by wheelchair users.

7 23. Plaintiff personally encountered these barriers.

8 24. These inaccessible conditions denied the plaintiff full and equal access
9 and caused him difficulty and frustration.

10 25. Plaintiff would like to return and patronize the Supermarket but will be
11 deterred from visiting until the Defendants cure the violations.

12 26. The Defendants have failed to maintain in working and useable
13 conditions those features required to provide ready access to persons with
14 disabilities.

15 27. The violations identified above are easily removed without much
16 difficulty or expense. They are the types of barriers identified by the
17 Department of Justice as presumably readily achievable to remove and, in fact,
18 these barriers are readily achievable to remove. Moreover, there are numerous
19 alternative accommodations that could be made to provide a greater level of
20 access if complete removal were not achievable.

21 28. For example, one of the common barrier removal projects is to modify
22 transaction counters so that there is an accessible portion of counter. This is a
23 simple architectural and construction task, well within the capabilities of any
24 general contractor, and done with a modicum of expense and effort.

25 29. Plaintiff is and has been deterred from returning and patronizing the
26 Supermarket because of his knowledge of the illegal barriers that exist.
27 Plaintiff will, nonetheless, return to assess ongoing compliance with the ADA
28 and will return to patronize the Supermarket as a customer once the barriers

1 are removed.

2 30. Given the obvious and blatant violation, the plaintiff alleges, on
3 information and belief, that there are other violations and barriers on the site
4 that relate to his disability. Plaintiff will amend the complaint, to provide
5 proper notice regarding the scope of this lawsuit, once he conducts a site
6 inspection. However, please be on notice that the plaintiff seeks to have all
7 barriers related to his disability remedied. See *Doran v. 7-11*, 524 F.3d 1034
8 (9th Cir. 2008) (holding that once a plaintiff encounters one barrier at a site,
9 he can sue to have all barriers that relate to his disability removed regardless of
10 whether he personally encountered them).

11 31. Additionally, on information and belief, the plaintiff alleges that the
12 failure to remove these barriers was intentional because: (1) these particular
13 barriers are intuitive and obvious; (2) the defendants exercised control and
14 dominion over the conditions at this location and, therefore, the lack of
15 accessible facilities was not an “accident” because had the defendants
16 intended any other configuration, they had the means and ability to make the
17 change.

18
19 **I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS**
20 **WITH DISABILITIES ACT OF 1990** (On behalf of plaintiffs and against all
21 defendants (42 U.S.C. section 12101, et seq.)

22 32. Plaintiff repleads and incorporates by reference, as if fully set forth
23 again herein, the allegations contained in all prior paragraphs of this
24 complaint.

25 33. Under the ADA, it is an act of discrimination to fail to ensure that the
26 privileges, advantages, accommodations, facilities, goods and services of any
27 place of public accommodation is offered on a full and equal basis by anyone
28 who owns, leases, or operates a place of public accommodation. See 42 U.S.C.

1 § 12182(a). Discrimination is defined, inter alia, as follows:

- 2 a. A failure to make reasonable modifications in policies, practices,
3 or procedures, when such modifications are necessary to afford
4 goods, services, facilities, privileges, advantages, or
5 accommodations to individuals with disabilities, unless the
6 accommodation would work a fundamental alteration of those
7 services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).
- 8 b. A failure to remove architectural barriers where such removal is
9 readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are
10 defined by reference to the ADAAG, found at 28 C.F.R., Part 36,
11 Appendix “D.”
- 12 c. A failure to make alterations in such a manner that, to the
13 maximum extent feasible, the altered portions of the facility are
14 readily accessible to and usable by individuals with disabilities,
15 including individuals who use wheelchairs or to ensure that, to the
16 maximum extent feasible, the path of travel to the altered area and
17 the bathrooms, telephones, and drinking fountains serving the
18 altered area, are readily accessible to and usable by individuals
19 with disabilities. 42 U.S.C. § 12183(a)(2).

20 34. In areas used for transactions that may not have a cash register but at
21 which goods or services are sold or distributed, the business must provide
22 either: (1) a portion of the main counter which is a minimum of 36 in inches
23 length shall be provided with a maximum height of 36 inches; or (2) an
24 auxiliary counter with a maximum height of 36 inches in close proximity to the
25 main counter; or (3) some sort of qualifying equivalent facilitation. 1991
26 Standards § 7.2(2). Under the 2010 Standards, where the approach to the sales
27 or service counter is a parallel approach, such as in this case, there must be a
28 portion of the sales counter that is no higher than 36 inches above the floor and

36 inches in width and must extend the same depth as the rest of the sales or service counter top. 2010 Standards § 904.4 & 904.4.1.

35. Here, no such accessible transaction counters in the meat and cheese department have been provided in violation of the ADA.

36. Ticket dispensers are covered by the height/reach requirements of the 1991 Standards § 4.27 and 2010 Standards § 308.3 for control or operating mechanisms. If the clear floor space allows parallel approach by a person in a wheelchair, and the high-side reach is obstructed, the maximum high side reach allowed shall be 48 inches.

37. Here, the failure to provide an accessible ticket dispenser in the meat department is a violation of the ADA.

38. A public accommodation must maintain in operable working condition those features of its facilities and equipment that are required to be readily accessible to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

39. Here, the failure to ensure that the accessible facilities were available and ready to be used by the plaintiff is a violation of the law.

40. Given its location and options, plaintiff will continue to desire to patronize the Supermarket but he has been and will continue to be discriminated against due to the lack of accessible facilities and, therefore, seeks injunctive relief to remove the barriers.

II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL RIGHTS ACT (On behalf of plaintiffs and against all defendants) (Cal Civ § 51-53)

41. Plaintiff repleads and incorporates by reference, as if fully set forth again herein, the allegations contained in all prior paragraphs of this complaint.

42. Because the defendants violated the plaintiffs' rights under the ADA,

1 they also violated the Unruh Civil Rights Act and are liable for damages. (Civ.
2 Code § 51(f), 52(a).)

3 43. Because the violation of the Unruh Civil Rights Act resulted in difficulty,
4 discomfort or embarrassment for the plaintiffs, the defendants are also each
5 responsible for statutory damages, i.e., a civil penalty. (Civ. Code § 55.56(a)-
6 (c).)

7
8 **PRAYER:**

9 Wherefore, Plaintiff prays that this court award damages and provide
10 relief as follows:

11 1. For injunctive relief, compelling defendants to comply with the
12 Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the
13 Plaintiff is not invoking section 55 of the California Civil Code and is not
14 seeking injunctive relief under the Disabled Persons Act at all.

15 2. Damages under the Unruh Civil Rights Act which damages provide for
16 actual damages and a statutory minimum of \$4,000.

17 3. Reasonable attorney fees, litigation expenses and costs of suit, pursuant
18 to 42 U.S.C. § 12205; Cal. Civ. Code § 52.

19
20 Dated: May 15, 2017

CENTER FOR DISABILITY ACCESS

21
22 By: 
23 Russell Handy, Esq.
24 Attorneys for Plaintiff
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